

When exercising its discretion, a district court should first determine whether a pro se habeas petitioner has presented a nonfrivolous claim. *Battle [v. Armontrout]*, 902 F.2d 701, 702 (8th Cir. 1990). If the petitioner has presented only claims that are frivolous or clearly without merit, the district court should dismiss the case on the merits without appointing counsel. *See* Habeas Rule 4. If the petitioner has presented a nonfrivolous claim, the district court should then determine whether, given the particular circumstances of the case, the appointment

of counsel would benefit the petitioner and the court to such an extent that “the interests of justice so require” it. 18 U.S.C. § 3006A(a)(2); *see also Battle*, 902 F.2d at 702. To determine whether appointment of counsel is required for habeas petitioners with nonfrivolous claims, a district court should consider the legal complexity of the case, the factual complexity of the case, the petitioner’s ability to investigate and present his claim, and any other relevant factors. *See Battle*, 902 F.2d at 702; *Johnson v. Williams*, 788 F.2d 1319, 1322-23 (8th Cir. 1986).

*Id.*

Petitioner has presented nonfrivolous claims in his petition. However, after review of the pleadings in this case, the Court finds that the appointment of counsel would not benefit Petitioner and the Court to such an extent that the interests of justice require the appointment of counsel at this time. This case is not particularly legally or factually complex. In addition, Petitioner has demonstrated, at this point, that he can adequately present his claims to the Court.

In the event that the Court determines that a hearing is necessary to resolve Petitioner’s petition for writ of habeas corpus or that for some other reason the interests of justice require the appointment of counsel, the Court will appoint counsel. However, at this time, the undersigned finds that Petitioner is not entitled to the appointment of counsel pursuant to *Abdullah, supra*.

Accordingly,

**IT IS HEREBY ORDERED** that Petitioner’s second Motion for Appointment of Counsel (Doc. 15) is **DENIED** without prejudice at this time.

  
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SHIRLEY PADMORE MENSAH  
UNITED STATES MAGISTRATE JUDGE

Dated this 12th day of March, 2018.